

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Case No. 1:19-cv-00165
Hon. Janet T. Neff

Plaintiff,

AND

MELINDA L. CROOKE,

Intervenor-Plaintiff,

v.

HERBRUCK POULTRY RANCH, INC.,

Defendant.

_____ /

CONSENT DECREE

The United States Equal Employment Opportunity Commission (“Commission” or “EEOC”) filed this action against Herbruck Poultry Ranch, Inc. (hereinafter “Herbruck”) to enforce the Americans with Disabilities Act of 1990, 42 U.S.C. § 12112(a) (“ADA”). The Commission alleged that Herbruck violated the ADA by harassing Melinda Crooke because of her disability, retaliating against her because she complained of harassment, and constructively discharging her because of her disability in violation of the ADA.

The Commission and Herbruck agree that this action should be resolved by entry of this Decree. Notwithstanding the forgoing, this Decree does not constitute an admission by either party as to the claims or defenses of the other. This Consent Decree shall be a final and binding settlement in full disposition of the claims arising out of the complaint filed by the Commission on behalf of Crooke. The Court therefore finds, based on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) implementation of this Decree will advance the purposes and provisions of the ADA; and (3) this Consent Decree resolves all matters and claims in controversy in this lawsuit as provided in the paragraphs below.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED:

INJUNCTION

1. Herbruck and its officers, agents, employees and successors shall not subject its employees to disability-based harassment.

2. Herbruck shall submit a copy of its revised anti-discrimination and harassment policies and shall submit a copy of its revised policies and procedures pertaining to disability harassment within thirty (30) days of the entry of this Decree. The revised policies shall specify that:

- a. Employee complaints of harassment and discrimination do not have to be in writing; and

b. Complaints about illegal non-sexual harassment will be handled according to revised policies which provide substantively the same procedures, protections and remedial measures as sexual harassment complaints.

3. Herbruck shall take immediate and appropriate investigatory and remedial action in response to any and all complaints of disability-based harassment, disability-based slurs or any offensive conduct or remarks based on disability, in accordance with its revised non-discrimination policy.

4. If any employee, supervisor or manager, subjects an employee to or participates in disability-based harassment, Herbruck shall discipline that employee in accordance with its revised non-discrimination policy.

5. Herbruck and its officers, agents, employees, and successors shall not retaliate against any person who: (i) opposes discriminatory practices made unlawful by the ADA; (ii) files a charge of discrimination or assists or participates in the filing of such a charge; or (iii) assists or participates in any manner in an investigation, proceeding or hearing related to the ADA.

MONETARY RELIEF

6. Herbruck shall pay Melinda Crooke the gross amount of \$93,000. This amount represents \$15,000 for back pay, \$46,000 for compensatory damages, and \$32,000 for other legal fees permitted under the ADA. Three checks shall be issued,

one for backpay, one for compensatory damages and one for legal fees.

For the backpay amount, Herbruck shall issue the check for \$15,000 less applicable taxes and withholdings. Herbruck shall not deduct from back pay the employer's share of any costs, taxes or social security required by law to be paid by Herbruck. During the normal course of business, Herbruck shall issue a W-2 to Crooke for the payment designated as back pay, less applicable taxes and withholdings.

For the second check, Herbruck shall not withhold any amounts from the payment for compensatory damages. During the normal course of business, Herbruck shall issue an IRS Form 1099-MISC to Crooke for the payment designated as the compensatory damages amount.

The checks for backpay and compensatory damages shall be made payable to Melinda Crooke, and the legal fee check made payable to Wheeler Upham, P.C., and all checks to be mailed to Wheeler Upham, Calder Plaza Building, 250 Monroe Ave NW #100, Grand Rapids, MI 49503 within 7 days of entry of the Decree.

7. Within 7 days after each check has been mailed pursuant to Paragraph 5, Herbruck shall mail copies of each check to Kenneth Bird, Regional Attorney, care of Dale Price, Trial Attorney, EEOC, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226, and shall also be sent via email to monitoring-eeoc-into@eeoc.gov.

NOTICE POSTING

8. For the duration of this Decree, Herbruck shall post the Notice (attached as Attachment A) where employee notices are posted. This Notice shall remain posted throughout the term of this Decree. If the Notice becomes defaced, marred, or otherwise unreadable, Herbruck shall post a readable copy of the Notice in the same manner as soon as reasonably practicable.

TRAINING

9. A. Within one hundred twenty (120) days of the entry of this Decree, Herbruck shall provide training to all employees, supervisors, managers, and human resources personnel on disability discrimination. This training will include the ADA's prohibitions against harassment and retaliation and Herbruck's duty to provide a workplace free of disability-based harassment.

B. Annually thereafter, Herbruck shall provide training to all supervisors, managers and human resources personnel ("Supervisory Personnel") on the same topics outlined above.

C. Training for non-Supervisory Personnel may be conducted electronically. Herbruck has provided a description and agenda of the anticipated training to the Commission, which has deemed the training adequate and appropriate. Training of Supervisory Personnel shall be held live for at least sixty (60) minutes, including a segment for questions and answers. The subsequent

training sessions of Supervisory Personnel shall occur within 30 days of the anniversary date of entry of the Decree by the Court.

D. All attendees shall register when they attend training. The registries will identify the date of completion of the training and the attendees by name and job title. Within 30 days following each training session, Herbruck will provide the Commission with certification that such training occurred and include a copy of the registry. This information shall be provided to Kenneth Bird, Regional Attorney, care of Dale Price, Trial Attorney, EEOC, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226, and shall also be sent by email to monitoring-eeoc-indo@eeoc.gov.

E. At least fourteen (14) days prior to each annual live training for Supervisory Personnel, Herbruck shall submit to the Commission the name(s), address(es), telephone number(s), and resume(s) of the proposed trainer(s), the training dates, and an outline of the training contents, to the Commission's Regional Attorney in the same manner as 9D above.

DURATION

10. This Decree shall expire by its own terms at the end of two and a half (2.5) years following entry by the Court, unless extended pursuant to paragraph 13 below.

JURISDICTION AND COMPLIANCE

11. The Court shall retain jurisdiction and will have all available equitable powers, including injunctive relief, to enforce any and all parts of this Decree.

Upon motion of the Commission, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in a good faith effort to resolve any dispute as to compliance prior to seeking review by the Court.

12. The Commission may review compliance with the Decree. As part of such review, the Commission may examine Herbruck's documents which are pertinent to the Commission's allegations of non-compliance. The Commission shall have the right, with at least twenty-four (24) hours written notice, during regular business hours, hereby defined as Monday through Friday 9:00 am – 5:00 pm EST, to enter and inspect Herbruck's premises to ensure compliance with this Decree.

13. In the event the Court determines that Herbruck has not complied, the Court may order appropriate relief, including, but not limited to, an extension of the Decree for the time necessary to remedy non-compliance, an award of attorney's fees and costs and an award of fines for contempt of court.

MISCELLANEOUS

14. Each party will bear its own costs and fees, except as otherwise provided herein.

15. If any provision of this Decree is found to be unenforceable by a Court, only the specific provision in question shall be affected and the other enforceable provisions shall remain in full force.

16. Any modification to this Decree can only be made by the Court.

17. The terms of this Consent Decree are and shall be binding upon the present and future owners, officers, directors, employees, creditors, agents, trustees, administrators, successors, representatives, and assigns of Herbruck.

18. Prior to selling all or substantially all of its assets to another person or entity during the term of this Decree, Herbruck shall inform the person or entity of this Decree and provide the person or entity with a copy of this Decree. In addition, Herbruck shall provide notice to the EEOC of any transfer of ownership during the term of this Decree.

19. The Court will retain jurisdiction of this case for two and a half (2.5) years for purposes of monitoring compliance with the Decree and entry of such further orders or modifications as may be necessary or appropriate.

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

HERBRUCK POULTRY RANCH, INC.

/s/ Dale Price
DALE PRICE (P55578)
Trial Attorney
DETROIT FIELD OFFICE
Patrick V. McNamara Federal Building
477 Michigan Ave, Room 865
Detroit, Michigan 48226
(313) 26-7808
dale.price@eeoc.gov

/s/ Greg Herbruck (by DP w/ perm.)
By: Greg Herbruck
Its: President

Dated: December 4, 2019

Dated: December 4, 2019

IT IS SO ORDERED.

December 5, 2019
Dated

/s/ Janet T. Neff
Hon. Janet T. Neff
United States District Judge

APPENDIX A

EMPLOYEE NOTICE

NOTICE OF NON-HARASSMENT POLICY

Federal law requires that there be no harassment against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age (over 40) or disability.

The Federal Americans with Disabilities Act prohibits employers from permitting disability-based harassment, or otherwise discriminating on the basis of disability in aspects of employment including, but not limited to, hiring, promotion, discharge, pay, job training and fringe benefits. That Act also requires employers to provide a reasonable accommodation to employees with disabilities to enable them to do their jobs.

Herbruck supports and will comply with such federal law in all respects and will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law or have given testimony, assistance or participation in any investigation, proceeding or hearing conducted by the U.S. Equal Employment Opportunity Commission.

An employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

Questions concerning this notice may be addressed to:

**Equal Employment Opportunity Commission
477 Michigan Avenue, Room 865
Detroit, Michigan 48226
Telephone: (313) 226-4600
EEOC 800 # 1-800-669-4000
TDD (313) 226-7599**